



INTERIOR BOARD OF INDIAN APPEALS

Colleen Simpson v. Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

38 IBIA 30 (07/24/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

COLLEEN SIMPSON,
Appellant

v.

ACTING ROCKY MOUNTAIN REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Affirming Decision
:
:
:
: Docket No. IBIA 02-18-A
:
:
: July 24, 2002

This is an appeal from an October 4, 2001, decision of the Acting Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), upholding the validity of a pipeline right-of-way over Crow Allotment 689-B, in which Appellant Colleen Simpson is the beneficial owner of the remainder interest, subject to a life estate in her father, James Simpson. For the reasons discussed below, the Board affirms the Regional Director's decision.

On April 19, 1963, May Laforge, Appellant's grandmother and the then-owner of Allotment 689-B, signed a form consenting to the granting of a pipeline right-of-way over the allotment "as contemplated by the application of CONTINENTAL PIPELINE COMPANY." On April 22, 1963, Continental Pipeline Company applied "pursuant to the act of February 5, 1948 (62 Stat. 17, 25 USC 323) and in accordance with Departmental Regulations 25 CFR 161" for a right-of-way across Indian lands on the Crow Reservation. ^{1/} The Superintendent, Crow Agency, BIA, approved the right-of-way on June 13, 1963, stating that approval was granted

as to the Indian lands within the Crow Indian Reservation * * * pursuant to the provisions of the Public Law 407 (62 Stat. 17) approved February 5, 1948, and Departmental Regulations 25 C.F.R. 161 subject to any prior, valid, existing

^{1/} Documents accompanying the application show that the right-of-way was to cross 40.651 miles of allotted land on the Crow Reservation.

right or adverse claims, For a Period of 50 years from date of approval, and is subject to renewal for a like term upon Compliance with applicable regulations, subject to any prior valid existing right or adverse claim. [2/]

On June 18, 2001, Appellant wrote to the Superintendent, contending that BIA did not act in Laforge's best interest when it approved the right-of-way in 1963; that BIA violated several regulations in approving the right-of-way; that the right-of-way was void because the Superintendent's approval notation was partially handwritten; that the right-of-way should have been limited to 20 years; and/or that Laforge should have been allowed to choose between a 20-year and a 50-year right-of-way. The Acting Superintendent responded on July 11, 2001, stating that Laforge had agreed to the right-of-way, which had been granted in accordance with applicable regulations. Appellant appealed the Acting Superintendent's letter to the Regional Director, who held in his October 4, 2001, decision that the grant of right-of-way was adequately justified and that its term was supported by regulation and case law.

On appeal to the Board, Appellant repeats some of the contentions she made in her June 18, 2001, letter to the Superintendent. She argues that the right-of-way is invalid because the Superintendent's approval notation is partially handwritten and contains an unauthorized option to renew; because BIA did not act in Laforge's best interest; and because BIA did not give Laforge an opportunity to consent to a 20-year term for the right-of-way, rather than a 50-year term.

The Regional Director contends that Appellant lacks standing to contest the validity of the right-of-way because, as remainderman, she does not have a present right to possession. The Regional Director did not question Appellant's standing when the matter was pending before him. Nor did he contend that Appellant lacked standing before the Board when she appealed another decision concerning a different right-of-way over the same allotment. Simpson v. Rocky Mountain Regional Director, 37 IBIA 182 (2002). Under these circumstances, the Board declines to consider the Regional Director's standing argument.

Appellant's references to a 20-year term suggest that she may have intended to argue that the right-of-way should have been granted under the Act of Mar. 11, 1904, ch. 505, 33 Stat. 65, as amended, 25 U.S.C. § 321, which limits the terms of pipeline rights-of-way granted under that statute to a term of 20 years with the possibility of renewal for another 20 years. As indicated above, this right-of-way was granted under the Act of Feb. 5, 1948, ch. 45, 62 Stat. 17, 25 U.S.C. §§ 323-328, which contains no term limitations, and 25 C.F.R.

2/ The underlined portion of the Superintendent's approval statement is handwritten.

Part 161 (1963), under which the terms of pipeline rights-of-way were limited to 50 years with the possibility of renewal for another 50 years. 25 C.F.R. § 161.19 (1963). ^{3/}

To the extent Appellant may have intended to argue that the right-of-way should have been limited to 20 years in accordance with the 1904 Act, her argument is refuted by the decision of the United States Court of Appeals for the Ninth Circuit in Blackfeet Indian Tribe v. Montana Power Co., 838 F.2d 1055 (9th Cir.), cert. denied, 488 U.S. 828 (1988), a case which concerned a challenge by the Blackfeet Tribe to five pipeline rights-of-way approved between 1961 and 1969. The Tribe contended that BIA exceeded its authority by approving the rights-of-way for 50-year terms under the 1948 Act. It argued that the 1904 Act was controlling and sought to limit the terms of the rights-of-way to 20 years, in accordance with that Act. The Tribe's argument was rejected by the Ninth Circuit, which held that the two statutes co-existed and that BIA had properly approved the rights-of-way for 50-year terms under the 1948 Act, in accordance with consent given by the Tribe.

The Regional Director points out that the consent form which Laforge signed contained no term limitation. Thus, he argues, she consented to an unlimited right-of-way, and the Superintendent's handwritten notation on the approval statement, to which Appellant objects, actually narrowed the right-of-way grant consented to by Laforge.

The form which Laforge signed is a printed BIA form titled "STATEMENT OF OWNERS OF ALLOTTED LAND TO ACCOMPANY APPLICATION FOR RIGHT-OF-WAY." The form is clearly intended to be used with applications for various kinds of rights-of-way. Presumably, it is for that reason that no term limitation appears in the printed portion of the form. Although there is a space for adding "Other terms or comment," nothing appears in that space on the form signed by Laforge.

The Superintendent's approval statement is mostly typewritten. The typewritten portion, however, contains no mention of a term. ^{4/} The term limitation appears only in the

^{3/} 25 C.F.R. § 161.19 (1963) provided in part:

"Rights-of-way for railroads, telephone lines, telegraph lines, public highways, and water control projects including but not limited to dams, reservoirs, flowage easements, ditches and canals shall be without limitation as to term of years. Rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as fixed by the Secretary and stated in the grant, and shall be subject to renewal for a like term upon compliance with the applicable regulations."

^{4/} It appears likely that the typewritten approval statement was prepared by the right-of-way applicant. The type is identical to the type in the Engineer's Affidavit and the Applicant's Certificate, which were almost certainly prepared by the applicant.

handwritten notation which, according to the Regional Director, the Superintendent added to bring the right-of-way into compliance with 25 C.F.R. § 161.19 (1963).

Appellant contends that the handwritten notation was an unsanctioned modification which tainted the original document because it added an option to renew the right-of-way which violated 25 C.F.R. § 169.19 (2001), the renewal provision of BIA's present right-of-way regulations. ^{5/} The Superintendent's handwritten notation tracked the language of 25 C.F.R. § 161.19 (1963), which provided that a right-of-way for a limited term of years "shall be subject to renewal for a like term upon compliance with the applicable regulations." Under the Superintendent's statement and 25 C.F.R. § 161.19 (1963), an applicant for renewal of the right-of-way is required to comply with the terms of the regulatory renewal provision in effect at the time of the renewal application. There is no conflict between the Superintendent's handwritten notation and either 25 C.F.R. § 161.20 (1963) or 25 C.F.R. § 169.19 (2001).

Although Appellant contends that the addition of the handwritten notation made the right-of-way invalid, in fact the opposite is true. Had the Superintendent signed the approval statement in its original typewritten form, the right-of-way would have violated 25 C.F.R. § 161.19 (1963) because it would have had no term limitation.

The Board finds that the handwritten notation on the Superintendent's approval statement did not make his approval of the right-of-way, or the right-of-way itself, invalid.

Appellant's remaining arguments are based on her speculations as to Laforge's ability to understand matters concerning the right-of-way and her speculations as to BIA's approval of the right-of-way. She does not support her arguments with any evidence. Appellant's speculations as to what Laforge may or may not have understood in 1963 and what BIA may or may not have discussed with her at that time are insufficient to prove her assertions or to show error in the Regional Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's October 4, 2001, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{5/} 25 C.F.R. § 169.19 (2001) was not in effect in 1963, when this right-of-way was approved. Appellant may have intended to refer to the renewal provision in effect at the time, 25 C.F.R. § 161.20 (1963), which is similar, but not identical, to the present provision. The Board notes that both require consent of the landowners for renewals.